Testimony on Reducing Regulatory Burden
before the
Subcommittee on Financial Institutions and Consumer Credit
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I. Introduction

Madame Chairwoman, Ranking Member Vento, and members of the Subcommittee, good morning and thank you for the opportunity to discuss issues related to reducing regulatory burden and streamlining the regulatory process for insured depository institutions. We at the Office of Thrift Supervision ("OTS") are continually looking for ways to reduce regulatory burden on the institutions we regulate while fulfilling our statutory missions to protect their safety and soundness and assure compliance with laws.

Unnecessary regulatory burden is always a drag on insured depository institutions. Its impact today, however, is perhaps even more significant than in the past, as heightened competition in the financial services industry has compelled institutions to streamline and improve their efficiency in order to survive. As regulators, we have an obligation to minimize regulatory burden and thereby allow the institutions we supervise as much flexibility as possible in running their businesses, subject, of course, to prudent oversight of safety and soundness and compliance with laws.

Legislation that furthers thrifts' and banks' ability to more effectively serve the credit needs of their entire community is good government and good business. By design, thrifts generally are very good at providing community-focused financial services and products. Given their specialty in financing residential home mortgages, thrifts often have well-established, deep ties to their local communities. Those contacts, coupled with thrifts' statutory community lending focus, have enabled many thrifts to become model community-based financial services providers. Even in this time of mega-mergers and nationwide franchises, millions of consumers and businesses prefer to do business with local institutions that they know and that know them.

H.R. 1585, the "Depository Institution Regulatory Streamlining Act of 1999," is the latest of several recent legislative initiatives to streamline and modernize the regulation of federally insured depository institutions. In recent years, these efforts have produced (1) the Riegle Community Development and Regulatory Improvement Act of 1994 ("CDRIA"), (2) the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal"), and (3) the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"). Each of these laws has enabled thrifts and banks to operate their businesses in a safe and sound manner, but with less interference from government.

In my testimony today, in addition to addressing the OTS-related subjects raised in the invitation letter, I will discuss several features of the proposed bill that are important to thrifts and the communities they serve.[1] The most notable of these provisions concern thrift community development efforts and the federal deposit insurance funds. I will also address a number of other provisions in the proposed legislation and suggest a few additions.

II. Thrift Community Credit Enhancement Provisions

H.R. 1585 includes two provisions that will allow thrifts to more easily and effectively provide financial products and services to their local communities. In combination, these provisions—dealing with thrift service companies and thrifts' community development investment authority—will enhance the contributions thrifts can make to their communities, facilitating both commercial and residential opportunities.

A. Thrift Service Corporation Enhancement (§212)

1. Removal of Geographic Limitation

The legislation would remove the current requirement that a federal thrift may only invest in a service corporation that is chartered in the savings association's home state. This requirement has impeded the ability of thrifts, which often operate interstate, to make community development and other investments reasonably related to activities of financial institutions. By removing the geographic limitations on thrift service corporation investments, this provision would enhance a thrift's ability to participate in community development activities wherever its business is located.

[1] Although the invitation letter requested testimony on sections 222 and 223, our testimony does not address those sections because OTS does not have oversight responsibilities with respect to CEBA or credit card banks.

Today, thrifts seeking to make community development investments through service corporations must create an additional corporate layer to invest in enterprises located outside the thrift's home state. Requiring the formation of these entities, which are often referred to as second-tier service corporations, serves no valid business purpose and results in unnecessary expense and burden on federal thrifts that may discourage otherwise worthwhile investments. Discouraging such investments undermines the purpose of existing statutory provisions, including the Riegle Community Development and Regulatory Improvement Act of 1994 ("CDRIA"), the Bank Enterprise Act of 1991, and the Community Reinvestment Act of 1977 ("CRA"), that are intended to promote community development investments. We strongly support this provision.

2. Removal of Ownership Limitation

We would also support an amendment to the bill to revise the current service corporation ownership restriction that prevents a federal thrift from investing in a first-tier service corporation jointly owned by other types of insured depository institutions and other entities for the purpose of carrying out activities reasonably related to activities of financial institutions. For example, a federal thrift cannot currently use its service corporation authority directly to invest jointly with a national bank in a community development corporation. Again, thrifts must go through the cumbersome step of setting up a second-tier service corporation to invest in community development financial institutions and in multi-bank community development corporations.

We believe the expense of this process has discouraged thrift-bank partnerships in community development investments. Modifying the thrift-only ownership requirement also will facilitate the formation of effective partnerships among thrifts, banks, and community groups to promote community development, while diversifying risk. For example, removing the ownership restriction would enable thrifts to invest in bank community development corporations and community development projects, which typically have both financial institutions and other investors—often local nonprofit entities—as owners.

We urge the Subcommittee to consider including language in the proposed legislation to ease the thrift-only ownership restrictions on thrift investments in service corporations. Significantly, this type of amendment would benefit banks as well as thrifts seeking to establish community development partnerships.

B. Clarification of Authority of Thrifts to Make Community Development Investments (§ 214)

Another feature of the bill would promote the ability of thrifts to contribute to the growth and stability of their local communities by updating the Home Owners' Loan Act to allow thrifts to make community development investments in real estate and mortgage loans. This provision replaces an outdated statutory cross-reference to HUD's Community Development Block Grant ("CDBG") program under Title I of the Housing and Community Development Act of 1974 that has caused confusion about the ability of thrifts to invest in community development projects and companies.

Under current law, a savings association may invest up to 5 percent of its assets in real estate and in mortgage loans on property located in areas receiving concentrated development assistance by a local government under HUD's CDBG program. Of this total, no more than 2 percent of assets may be invested directly in real estate.

As a result of changes to the CDBG program that occurred in 1981—almost 20 years ago—thrift investment opportunities that meet the technical requirements of the statute are rare, and OTS has found it cumbersome to promote the spirit and intent of Congress' determination to allow thrifts to make such community development investments. Currently, to promote these types of initiatives, OTS will issue a "no action" letter where a thrift seeks to make a community development investment that satisfies the intent of the existing provision, but does not clearly fall within the wording of the statute or the "safe harbor" criteria issued by OTS for such an investment. One "safe harbor" criterion is that the investment must be for residential housing for low- and moderate-income families and individuals. To address this problem, the bill would give thrifts community development investment authority more comparable to the authority of national banks and state member banks, i.e., to make investments "for the primary purpose of promoting the public welfare."

By incorporating the bank community investment standard, however, the provision would reduce the applicable percentage of assets limitation for thrift community development investments. Under the bill, the aggregate amount of such investments could not exceed 5 percent of the thrift's capital stock paid in and unimpaired, plus 5 percent of its unimpaired surplus fund, unless OTS determined, by order, that a higher amount would pose no significant risk to the deposit insurance fund and the thrift is adequately capitalized. Where OTS made such a finding, the cap would be up to 10 percent of unimpaired stock, plus up to 10 percent of unimpaired surplus.

Using the bank investment limitation, and thereby capping community development investments at a maximum of 10 percent of capital, would significantly lower the maximum dollar amount applicable to these investments. The reduction varies depending on the size of the thrift (the reduction would be about 40 percent for small thrifts, 50 percent for medium thrifts, and 60 percent for large thrifts). There appears to be no obvious safety and soundness or regulatory relief imperative for changing the existing investment authorization by which thrifts can determine permissible community development investments. While we would prefer to retain the current limit, we would not object to the change proposed in the bill since it does not appear at this point to significantly constrain the operations of thrifts.

C. Small Business Investment Company ("SBIC") Investment Authority

We urge the Subcommittee to include a provision that would update thrifts' authority to invest in SBICs to enhance their ability to provide capital to small businesses. Small businesses are the backbone of any local business community and constitute the linchpin for the successful development of stable and safe residential communities by providing essential services and employment opportunities. Our proposal would give thrifts the same authority to invest in SBICs currently enjoyed by national and state-chartered banks. Current law authorizes a federal savings association to invest up to 1 percent of its assets in minority enterprise SBICs formed under section 301(d) of the Small Business Investment Act of 1958 to assist members of Federal Home Loan Banks. Since this provision was added, however, no companies have met these criteria, and, in fact, section 301(d) was repealed in the fall of 1997. We urge the Subcommittee to give thrifts the same SBIC investment authority as national and state-chartered banks, which are authorized to invest up to a total of 5 percent of their capital and surplus in SBICs.

III. Issues Affecting the Deposit Insurance Funds

A. Abolition of the SAIF Special Reserve (§ 701)

I am especially pleased to join with FDIC Chairman Tanoue in strongly supporting the elimination of the SAIF Special Reserve and the restoration of the amount held in the Reserve to the SAIF, as proposed in section 701 of H.R. 1585. This proposal would remove a serious threat to the future stability of the deposit insurance funds. The January 1, 1999, transfer of approximately $980 million from the SAIF to the SAIF Special Reserve (by reducing the SAIF reserve ratio from an estimated 1.40 percent to 1.25 percent) has removed a vital cushion that would otherwise protect SAIF members from potential insurance premium increases to cover unexpected future SAIF losses and a subsequent premium disparity between the funds. By the end of 1998, both the SAIF and the BIF had generated substantial, comparable "cushions" above their statutory designated reserve ratios. Funding of the SAIF Special Reserve has recreated the risk of premium disparities and costly, destabilizing deposit shifting between the two funds. One reason Congress enacted the Deposit Insurance Funds Act of 1996 was to prevent such a result. The FDIC now estimates that the SAIF will increase by a maximum of $250 million due to premium collections and earnings during the first six months of 1999. While no one anticipates significant claims, this relatively small cushion exposes SAIF institutions to the risk of increased premiums and another potential BIF-SAIF premium differential, with the resulting troublesome deposit shifting between the funds.

B. Merger of the Insurance Funds

I also join Chairman Tanoue in urging that the Subcommittee add a provision merging the two FDIC insurance funds. Merger makes sense for several reasons. First, and most important, the federal government and the federal taxpayer have an interest in eliminating the economic and managerial inefficiencies of having two separate funds support one product—federal deposit insurance. Although the bank and the thrift charters are very different and have produced different asset portfolios between most banks and thrifts, federally insured deposits offered by these two types of entities are identical products. Having two funds makes no sense since the funds are, in effect, already well on the way toward converging. It is becoming increasingly anachronistic to refer to a "bank fund" and a "thrift fund." Today, commercial banks account for an estimated 35 percent of all SAIF-insured deposits, and almost 30 percent of thrift deposits are insured by the BIF.

Second, assuming restoration of the SAIF Special Reserve to the SAIF, merger would not result in significant dilution of either fund. Both are now at nearly equal reserve ratios. The FDIC-estimated 1999 range for the BIF reserve ratio is 1.34 percent to 1.42 percent, and assuming the restoration of the SAIF Special Reserve, the range for the SAIF reserve ratio is 1.37 percent to 1.46 percent. With both funds fully funded and equally strong, all federally insured banks and thrifts would equally benefit from a larger, single insurance fund providing federal deposit insurance to both industries. If there is any marginal benefit, it would accrue to the BIF.

Third, merging the funds would result in better diversification. This would further strengthen the federal deposit insurance system. In addition, a merged, diversified fund would eliminate any vulnerability to costly and destabilizing deposit shifts between the two funds.

IV. Other Provisions in the Proposed Bill

A. Protection of Confidential Information

1. Bank Examination Report Protections (Title V)

The legislation includes several important provisions designed to protect confidential supervisory information. This information includes reports of examination or investigation, correspondence or communications arising from examinations or investigations, and correspondence or communications of a depository institution produced in response to an inquiry or other supervisory exercise of the federal banking regulators. The bank examination protection provisions in the bill are the same as those contained in H.R. 174, which Representative McCollum introduced in January.

The legislation would clarify and extend the recognition of some federal courts that supervisory communications between regulators and regulated institutions are privileged and protected from disclosure. The legislation would expressly recognize such a privilege and require litigants to seek confidential supervisory information from the appropriate federal banking agency rather than from the financial institution. It would also allow a financial institution to furnish privileged internal bank communications (such as a memorandum from the bank’s lawyer to a bank officer) to its regulator without risking loss of the privilege. Currently, if an institution provides its regulator with an attorney-client communication prepared by the institution’s lawyer, there is a risk that a court would hold that the disclosure to the regulator terminated any privilege.

We support these provisions, which will allow us to supervise the institutions we regulate more effectively. The ability to protect privileged supervisory information, and provide assurance to insured institutions that they can share privileged information with their regulator, will enhance the ability of federal banking agencies to conduct informed, comprehensive, and practical supervision of insured institutions in a cooperative, non-adversarial context.

2. Protection against Inappropriate Disclosure of Confidential Information

OTS urges the Subcommittee to consider adding to the bill another important improvement to assure the protection of confidential information. The banking statutes protect from adverse action employees of insured depository institutions and the federal banking agencies, the Federal Home Loan Banks, and the Federal Reserve Banks who disclose information regarding possible violations of any law, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Employees may disclose this information only to any such agency or bank or to the Attorney General and may do so directly or through an intermediary.

This statute was never intended to protect employees who disclose confidential information to persons and institutions under investigation for possible wrongdoing, whether directly or through an intermediary. It was intended to protect employees who provide information to the agencies in a position to address possible violations of law. OTS is concerned about the applicability of this statute to a recent case in which an employee disclosed confidential supervisory information to an officer of a financial institution regulated by OTS. The officer then disclosed it not only to the FDIC, but also to trade associations and others, so that the information was made public.

OTS supports legislation to clarify existing law so employees can disclose to any appropriate entity responsible for enforcing the applicable laws and protecting the banking system. Because there is no means to assure that the employee's intermediary will make disclosures only to the entities specified in the statute, this provision would remove the authority for disclosure to be made by another person on behalf of the employee, except that an attorney representing the employee could do so if the attorney were not affected by the information and did not represent an affected party. This amendment would not in any way make appropriate disclosures more difficult, since an employee may request anonymity or may disclose the information anonymously to the employee's own agency or to any other specified entity.

B. Authority to Pay Interest on Reserves at Federal Reserve Banks (§ 101)

The draft legislation would amend the Federal Reserve Act ("FRA") to authorize the Board of Governors of the Federal Reserve System ("FRB") to pay interest on balances maintained at a Federal Reserve Bank at least once a quarter at a rate not to exceed the general level of short-term interest rates. The legislation would also allow a member bank to count toward its reserve balance certain balances maintained at other depository institutions. Under current law, depository institutions must hold reserves against demand deposits or transaction accounts in accordance with FRB regulations, and the FRB may not pay interest on these reserves. Because the proposed amendment does not affect the safety and soundness of existing insured institutions or the federal deposit insurance funds, OTS has no position on the provision.

C. Authority to Pay Interest on Commercial Accounts (§ 102)

Currently, depository institutions may not pay interest on business transaction accounts. H.R. 1585 allows institutions to pay interest on commercial accounts beginning in fiscal year 2005. Until then, the bill would permit up to 24 transfers each month from an interest-paying account to a demand deposit account that does not pay interest. This proposal is consistent with the views of the federal banking agencies on this issue, which in September 1996 indicated to Congress that they believed the statutory prohibition on paying interest on demand deposits no longer serves a public purpose. We continue to maintain this position and, therefore, support the substance of the proposed legislation. OTS would support earlier repeal of the restriction on paying interest on business checking accounts, so long as the repeal takes effect after the transition to Year 2000.

Prohibiting the payment of interest on demand deposits is largely ineffective for two reasons. First, the use of "sweep accounts" effectively circumvents the prohibition by allowing business customers to have the funds in their demand accounts "swept out" of the account each night into an interest bearing or investment account. The funds are returned to the customer's demand account the next morning. Second, institutions pay implicit interest on demand deposits by absorbing costs or by paying above-market interest rates on associated deposits or below-market rates on loans.

This new authority would have several implications for institutions paying interest on business demand deposits. First, it may result in depositories imposing fees for services they have, until now, subsidized as an inducement for business demand account customers. In this regard, more efficient pricing of services should improve overall institutional efficiency.

Second, the ability of depositories to pay interest directly may increase business use of demand deposits. This would eliminate the competitive disadvantage that many, particularly smaller, institutions have as compared to other financial services providers, such as money market mutual funds, that offer liberal check writing services, ATM access, and similar services through interest-paying transaction accounts. This, too, should promote market and institutional efficiencies.

Third, permitting the payment of interest on demand deposits negates the need for sweep arrangements. Because commercial banks may generally take advantage of a wider variety of sweep arrangements than thrifts, primarily because of banks' broker-dealer exemption from the federal securities laws, removal of the prohibition on the payment of interest on business demand accounts may, at the margin, improve the competitive position of thrifts. More importantly, for competitive, fairness, and market and institutional efficiency reasons, we believe it makes no sense to continue to encourage the exercise of a market practice—sweep arrangements—to permit the indirect payment of interest on accounts that should be authorized directly.

D. Call Report Simplification (§ 302)

Section 302 requires the federal banking agencies jointly to develop a system allowing insured depository institutions and their affiliates to electronically file reports and statements and to make such reports and statements available to the public electronically. It also requires the federal banking agencies, consistent with safety and soundness, to develop a single form of core information required by each agency and to simplify instructions for call reports. Finally, it requires each federal banking agency to review the information required by the schedules for supplementing core call report information and to eliminate requirements that are not warranted by safety and soundness or by other public purposes.

We support the goals of this provision. With the addition of the requirement for consultation with State bank supervisors, these requirements are the same as those set forth in section 307 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("CDRIA"). An interagency task-force already exists and is actively dealing with these issues.

OTS continues to participate in an FFIEC interagency task force that is developing a uniform call report. Last year I reported that the task force had developed a core balance sheet and income statement format that banks and thrifts would use for public reporting purposes. The task force has now completed the development of a working draft of all core information schedules. The task force is resolving definitional and other issues arising from the current separate reporting requirements for savings associations, banks, and bank holding companies.

Banking agency task force members have been compiling the results of a survey on the uses of information collected in the call report and evaluating the results. A similar survey and review was previously performed at OTS for the Thrift Financial Report ("TFR"). OTS implemented a streamlined TFR beginning in June 1996 which resulted in a 40 percent reduction in the data items collected on the TFR. The results of the banking agency survey will assist the task force in providing information to FFIEC this year on possible options for streamlining existing reporting requirements and determining the needs of each agency's supplemental schedules.

The target date for implementing the core report is March 2001. A Federal Register notice seeking public comment on a proposed core report is scheduled for publication later this year.

As I reported last year, OTS required that all financial reports be filed electronically beginning in January 1993. To facilitate the industry's conversion to electronic filing, OTS contracted with a single software vendor to provide software to the industry. This was the first major step by OTS in utilizing technology to modernize our financial reporting process. Since 1993 we have continued to explore and adopt the use of technology to enhance the efficiency of the financial reporting process, reduce reporting burden, increase customer service, and reduce the costs associated with regulatory reporting for both the industry and OTS.

In January 1998 OTS made available to the industry a Windows version of the electronic filing software. The Windows software helps to move the industry to more modern technology and serves to encourage all thrifts to implement further advances with technology. OTS is now exploring the use of the Internet for preparation and transmission of regulatory reports. The Internet will also give OTS the ability to send report preparation instructions and financial data directly to institutions via e-mail, eliminating the need for paper copy mailings.

E. Dividend Notice Requirement (§ 213)

This section would repeal the requirement that savings associations owned by savings and loan holding companies ("SLHCs") must notify OTS at least 30 days before paying any dividend. Under the Director's general supervisory authority, OTS may impose such notice requirements without the need for explicit statutory direction. There is no parallel statutory notice requirement imposed on thrifts controlled by individuals or owned by bank holding companies ("BHCs").

Although OTS originally suggested the repeal of the dividend notice requirement, after considering recent holding company applications, we have reconsidered our position. Many of these applications have raised challenging policy and supervisory issues, particularly the proposals that have involved unique business plans and strategies. This has caused us to look at our entire holding company process. We would like to learn more about payments of dividends in holding company structures and their effect on thrifts. After our review, if we conclude that repeal is appropriate, we will advise the Subcommittee.

OTS recently published a final regulation[2] that conforms our dividend requirements more closely to those of the other federal banking agencies. The updated regulation streamlines our requirements and ties cash dividends and other capital distributions to a savings association's earnings and condition. The regulation exempts well-capitalized, highly rated thrifts from providing advance notice of dividends under certain circumstances. This is consistent with reducing unnecessary regulatory burden.

F. Purchased Mortgage Servicing Rights (§ 303)

The legislation would amend section 475(a) of the Federal Deposit Insurance Act ("FDIA"), which provides that purchased mortgage servicing rights ("PMSR") may be included in calculating risk-based capital if, among other things, the servicing rights are valued at not more than 90 percent of their fair market value. In other words, current law requires a 10 percent "haircut" on the value of PMSRs.

The legislation would repeal the mandatory 10 percent "haircut" and provide that PMSRs may be valued at up to 100 percent of their fair market value if the federal banking agencies jointly determine such valuation would not have an adverse effect on the deposit insurance funds or the safety and soundness of insured depository institution.

OTS supports this provision. The Subcommittee may wish to consider extending the section to cover originated mortgage servicing assets.

[2] See 64 Fed. Reg. 2805 (January 19, 1999).

G. Noncontrolling Investments by Savings and Loan Holding Companies (§ 211)

The bill would allow an SLHC to acquire or retain a 5 percent to 25 percent non-controlling interest of another SLHC or savings association, subject to OTS approval. Under current law, an SLHC may acquire or retain a less than 5 percent interest in a SLHC or savings association, and with approval, may acquire a controlling interest in an SLHC or savings association of up to 25 percent. OTS is aware of no policy reason to bar SLHCs from holding non-controlling interests between 5 percent and 25 percent in a savings association or SLHC. Section 211 would create parity between SLHCs and BHCs and give SLHCs more flexibility. It would not change the statutory prohibition on acquisition by a multiple SLHC of more than 5 percent of a company engaged in business activities not permitted for multiple SLHCs.

In addition, the ability to make non-controlling investments in thrifts will assist institutions engaging in a qualified stock issuance ("QSI") authorized under section 10(q) of HOLA. Under current law, pursuant to a QSI, an undercapitalized thrift may sell up to 15 percent of its stock to a SLHC to improve the capitalization of the issuing thrift. It would be useful to have legislative history encouraging the FDIC to grant waivers from section 5(e) of the Federal Deposit Insurance Act, the cross-guarantee liability provision, for QSI investments, to encourage investment in undercapitalized thrifts.

V. Other Initiatives Not in the Proposed Bill

I would like to discuss briefly several other initiatives that OTS believes would be improvements to the legislation and urge the Subcommittee to include them in the bill.

A. Repeal of Thrift Liquidity Requirement in HOLA

OTS strongly urges including an amendment to repeal section 6 of the Home Owners' Loan Act ("HOLA"), which requires that a savings association hold liquid assets in an amount no less than 4 percent and no more than 10 percent, as determined by the OTS Director, of its total demand deposits and borrowings payable within one year. Such an amendment would remove this statutory liquidity requirement for federal thrifts and make conforming amendments to the HOLA definition of "liquidity investments" to ensure that such investments would still be authorized investments, though no longer required by section 6. For many years now, OTS has believed that the section 6 liquidity requirement for thrifts no longer serves its original purposes, is redundant, and should be eliminated. Thrifts' liquidity will continue to be an important component of the CAMELS supervisory rating system, as it is for banks.

Another benefit of repeal would be to avoid any potential problems thrifts may have meeting the requirements of section 6 in connection with Year 2000. Unusual cash demands that may arise in connection with the transition to Year 2000 could result in technical violations of the requirement. It could prove useful to relieve savings associations from having to comply with this provision before the end of this year. If repeal is not enacted by this fall, OTS would support a suspension of this provision to provide institutions with greater flexibility during the millennium changeover.

Repeal of section 6 would require a conforming amendment to the qualified thrift lender ("QTL") test under section 10(m) of HOLA. The QTL test generally requires that at least 65 percent of a thrift's portfolio assets must consist of certain categories of assets, known as qualified thrift investments ("QTI"). QTI primarily includes housing-related, education, small business, and credit card loans (certain categories of assets that qualify as QTI are subject to formulas increasing or decreasing the amount that may be counted). To determine portfolio assets, HOLA permits a thrift to deduct from its total assets certain amounts, including section 6 liquid assets (but only up to 20 percent of total assets).

OTS recommends amending the definition of portfolio assets to provide for deduction of "cash and other marketable securities as identified by the Director," subject to the current 20 percent limitation. Another alternative would be to continue to permit the deduction of liquid assets of the type permitted under section 6 as it now exists.

Some have raised concerns about whether the OTS-preferred amendment would loosen the QTL test. It would not. Our intent is not to make it easier or more difficult to comply with the QTL test. We believe that the phrase "cash and other marketable securities" is certainly no broader than the current list of liquid assets in section 6. Accordingly, the deductions a thrift may make in determining its portfolio assets would be the same (or conceivably less, depending on how the Director defines the term "marketable securities"). The result would be that the dollar amount of portfolio assets would be the same or higher (since the amount deducted would be the same or lower) and, therefore, the amount of QTI would have to be the same (or higher) to meet the 65 percent requirement.[3]

OTS believes the first alternative is preferable. It is simpler to administer because it doesn't rely on a provision that would be repealed, and it does not loosen the QTL test. While the second alternative would guarantee there would be no change to the QTL test, it would require that OTS continue to define what qualifies as liquid assets under a repealed provision.

Repeal of section 6 would also require a conforming amendment in the list of loans and other investments a thrift may make under HOLA. Section 5(c)(1)(M) permits a thrift to make loans that qualify as section 6 liquid assets. We do not intend to narrow this authority, and will be pleased to discuss with you or your staffs various alternatives.

B. Creation of a Statutory Deputy Director of OTS

OTS urges the Subcommittee to add to H.R. 1585 an amendment to the HOLA to provide statutory authority for up to four Deputy Directors for OTS. The authority for one or more Deputy Directors would be based closely on long-

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[3] For example, if a thrift had $100 of assets and $15 of deductions qualifying under current law, its portfolio assets would be $85 and it would have to have QTI of at least $55.25 ($85 x 65%). While we do not anticipate narrowing what may be counted as a deduction, if the amount of allowable deductions were to be reduced to $10, the portfolio assets would be $90 and the thrift would have to have QTI of at least $58.50 ($90 x 65%). The result is a tighter QTL test since a higher dollar amount of QTI would be required. Under no scenario do we believe the proposed amendment could result in higher allowable deductions that would make it easier to comply with the QTL test.

standing authority[4] for appointing Deputy Comptrollers in the Office of the Comptroller of the Currency ("OCC"). Consistent with the existing OCC legislation, the Secretary of the Treasury would make the appointments so each Deputy Director would qualify as an "inferior officer" under the Appointments Clause of the Constitution. This provision would remove any question about a Deputy Director's authority to perform the functions of the Director during a vacancy in the office of the Director or during the absence or disability of the Director. Just as under the OCC authority, there would be no limitation on the period that a Deputy Director could perform the Director's functions. Each Deputy Director would be under the direction of the OTS Director, who administers OTS subject to the general oversight of the Secretary of the Treasury.

There is a compelling policy reason to provide for such a statutory Deputy Director in OTS. The safety and soundness of the banking system depends on oversight by the Federal banking agencies, including OTS with respect to thrifts. Even when a Director leaves office, or there is an absence or disability of the Director, there should be no question about the authority of OTS to carry out its responsibilities to regulate and supervise thrifts, including taking enforcement actions, as appropriate to protect the public interest. When there is a vacancy in the office of the Director, or during the absence or disability of the Director, there is a risk that actions taken by OTS employees may be challenged since the Director is the only OTS position created by statute. The reality of the appointments process is that there can be a delay of many months before a sub-cabinet level position is filled. In light of this reality, this amendment would establish a chain of command within OTS that will assure there will be no gap in authority to regulate and supervise savings associations and will avoid future litigation over whether the acts of OTS staff members are valid.

[4] 12 U.S.C. 4

C. Agency Review of Competitive Factors in Bank Merger Act Filings

We would support an amendment to the House bill to eliminate the requirement that each federal banking agency request a competitive factors report from the other three banking agencies, as well as the Attorney General, when a filing is made under the Bank Merger Act. Decreasing that number to the institution's banking agency and the Attorney General, who would continue to be required to consider competitive factors of each merger transaction, would significantly reduce burden. In our experience, the vast majority of proposed mergers do not raise anti-competitive issues, and multiple reports, even for those that do, are not necessary.

We note that section 304 of S. 576 has such a provision, but also includes a list specifying the factors that regulators could consider when reviewing the competitive aspects of proposed merger transactions. Because the federal banking agencies already have broad authority to consider whatever anti-competitive factors they consider appropriate, including those factors listed in the Senate bill, such specificity is unnecessary, and may in fact reduce regulators' flexibility in reviewing proposed merger transactions. Accordingly, while we support reducing the number of agencies that must review proposed merger transactions, we would oppose any limitations to the agencies' ability to consider specific factors in the review of a pending application.

VI. Conclusion

As I emphasized at the outset of my testimony, OTS is committed to reducing burden wherever we have the ability to do so consistent with safety and soundness and compliance with law. I believe the proposed legislation advances this objective, and we are pleased and appreciative that many of the reforms we have long desired are included in the bill. The legislation will further free thrifts from unnecessary regulatory requirements and allow them to more efficiently and effectively serve the full range of credit needs of their local communities. I thank all those who have shown leadership on this issue, and we look forward to working with the Subcommittee to shape the best possible regulatory burden reduction legislation.

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